

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARCIA BURRELL et al.,

Plaintiffs,

CASE NO. 16-cv-10568

HON. GEORGE CARAM STEEH

v.

MGM GRAND CASINO DETROIT

et al.,

Defendants.

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ORDER OF DISMISSAL FOR FAILURE TO PROSECUTE

Plaintiffs filed their Complaint on February 16, 2016. Some four months later, on June 27, 2016, plaintiffs still having failed to file a certificate of service of process as to any defendant, this court ordered plaintiffs to show cause why this matter should not be dismissed for failure to prosecute. Plaintiffs' counsel timely replied to the court's show cause order setting forth various reasons for their delay including that counsel had serious personal issues and had difficulty using e-file to show proof of service. On the same day that they filed their response to the show cause order, plaintiffs also filed a certificate of service of process as to defendant MGM Grand Casino Detroit ("MGM"), showing the MGM had been served on June 13, 2016. Plaintiffs did not submit proof of service of process as to any of the other defendants.

Upon review of plaintiffs' response, this court ruled that even if plaintiffs' counsel failed to show good cause for a time extension, the court, in its discretion, would allow a short time extension primarily because the 2015 Amendments to the Federal Rules of Civil Procedure, which shortened the time period for service from 120-days to 90-days,

only went into effect just a few months prior to the filing of this lawsuit. Under the old Federal Rule of Civil Procedure 4(m), plaintiffs' service on MGM would have been timely. In addition, plaintiffs attempted service on the other defendants prior to the expiration date which existed under the old 120-day period set forth in Rule 4(m). Given these circumstances, the court granted plaintiffs a time extension to serve all defendants on or before August 10, 2016, and stated that the failure to do so would be grounds for immediate dismissal.

To date, plaintiffs have not submitted a certificate of service of process as to any of the other defendants. However, it appears that plaintiffs served defendant Michigan Gaming Control Board ("MGCB"), as that defendant filed a motion to dismiss based on its sovereign immunity, which this court has granted. No proof of service of the summons and Complaint exists as to the individual defendants, Daniel Hilanka and Eve Marston.¹ Plaintiffs are three months past the court ordered extended deadline for service of process, and nearly six months past the original Rule 4(m) deadline. Moreover, plaintiffs have not sought an additional time-extension. Accordingly,

IT IS ORDERED that defendants Eve Marston and Daniel Hilanka are DISMISSED.

Dated: November 10, 2016

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

¹ The Complaint identifies Hilanka as a MGCB officer; however, the MGCB denies that he is or ever was its employee.

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
November 10, 2016, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk